IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR.

O R D E R

Rajesh Gaur Vs. State of Rajasthan & Anr.
(S.B.CRIMINAL REVISION PETITION NO.137/2007)

DATE OF ORDER: MARCH 2, 2007

P R E S E N T

HON'BLE MR.JUSTICE GOPAL KRISHAN VYAS

Mr.Vishal Sharma, for the petitioner
Mr.J.P.S.Choudhary, Public Prosecutor

BY THE COURT:

By way of this revision petition, the petitioner is challenging the order dated 1st November, 2006, whereby cognizance has been taken by the learned trial court only for offence under Section 448 I.P.C. Learned counsel for the petitioner submits that the learned trial court committed an error while taking cognizance for offence under Section 448 I.P.C. only whereas the cognizance for offence under Section 380, 427 & 457 I.P.C. was required to be taken.

As per the facts narrated in the petition a written report was filed before Police Station, Merta City on 24.9.2006 with the facts that petitioner is running an Institute for teaching computers in the name of Gaur Institute of Computer

Management at a shop situated at Brahampuri, Merta City. The said shop was taken on rent from Shanti Devi and her son Ashok Purohit non-petitioner No.2. It was alleged in the report that with the criminal intention Ashok Purohit non-petitioner No.2 unlocked the shop forcefully and closed the main gate with stone slabs and took possession of the shop. It is further mentioned that Ashok Purohit entered from the back side in the shop and removed costly things including computers, dining table, cooler, fans, books, speakers, sofa etc. from the shop. After registering the First Information Report under Sections 453 & 380 I.P.C. investigation commenced and a site plan was prepared and statements of the witnesses were recorded under Section 161 Cr.P.C. But the investigating agency has filed charge-sheet only for offence under Section 448 I.P.C. before the learned trial court. The learned counsel vehemently pleaded that though material was on record for offence under Section 380, 427 & 457 I.P.C. but the learned Magistrate has committed an error while taking cognizance only for offence under Section 448 I.P.C. for which charge-sheet was filed. As per the evidence on record the accused has removed various articles from the possession of the petitioner without his consent and all the ingredients mentioned in Section 380 I.P.C. are prima facie on record against the non-petitioner No.2. Therefore, the learned trial court ought to have taken cognizance under Section 380 I.P.C. But the learned trial

court has filed to apply its mind for the purpose of taking cognizance under Section 380 I.P.C. so also when evidence was on record of damaging valuable articles including computers and various other things the cognizance under Section 427 I.P.C. was to be taken. It is also submitted that non-petitioner No.2 dishonestly removed the movable property with the intention to cause loss by wrongful means to the property. Therefore, the order passed by the learned trial court is totally against the law.

I have perused the entire record of the case so also the impugned order. As per the challan papers it is obvious that all material which is alleged to be removed was lying upon site and as per the evidence recorded by the investigating agency, there is no evidence for committing offence under Section 380 I.P.C. because all movable articles were lying at the place of occurrence and due to damage in the wall they were placed out of the shop. In my opinion, the learned trial court has rightly relied upon the evidence which is on record and framed the charge for offence under Section 448 I.P.C. There is no error in the order passed by the learned trial court.

The petition stands dismissed.

(GOPAL KRISHAN VYAS) J.

BKS/-